

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**COMMENTS OF NEW AMERICA FOUNDATION, CONSUMERS UNION,
AND MEDIA ACCESS PROJECT**

Sarah J. Morris
Benjamin Lennett
Open Technology Initiative
New America Foundation
1899 L Street, NW, 4th Floor
Washington, DC 20036

Parul P. Desai
Consumers Union
1101 17th Street NW, Suite 500
Washington, DC 20036

Matthew F. Wood
Media Access Project
1625 K Street, NW, Suite 1000
Washington, DC 20006

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TABLE OF CONTENTS

SUMMARY	2
I. INTRODUCTION.....	3
II. THE COMMISSION SHOULD ADOPT A MORE EXPANSIVE DEFINITION OF ELIGIBILITY FOR HIGH-COST AND CONNECT AMERICA FUND SUPPORT THAT EXPLICITLY INCLUDES COMMUNITY BROADBAND NETWORKS.....	5
III. THE COMMISSION MUST REQUIRE HIGH-COST AND CONNECT AMERICA FUND RECIPIENTS TO DEPLOY BROADBAND FACILITIES, YET PRESERVE VOICE SERVICE AND IMPROVE QUALITY OF ALL SUPPORTED SERVICES. ...	9
IV. THE COMMISSION SHOULD ADOPT EXPLICIT NETWORK NEUTRALITY OBLIGATIONS FOR PROVIDERS THAT RECEIVE HIGH-COST OR CAF SUPPORT.	11
V. THE COMMISSION ALSO SHOULD ADOPT OPEN ACCESS OBLIGATIONS FOR PROVIDERS RECEIVING SUPPORT, PARTICULARLY WHERE THAT RECIPIENT IS THE SOLE PROVIDER OF SERVICE IN HIGH-COST AREA.....	14
VI. CONCLUSION	15

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New America Foundation (“NAF”), Consumers Union (“CU”), and Media Access Project (“MAP”) (together, “Public Interest Commenters”) respectfully submit these comments in response to the Federal Communications Commission’s *Notice of Proposed Rulemaking* (“NPRM”)¹ in the above-captioned dockets. The NPRM seeks comment on rules designed to facilitate the replacement of the “High-Cost” mechanism of the Universal Service Fund (“USF”) with the Connect America Fund, as recommended by the National Broadband Plan.²

1 In the Matter of Connect America Fund, WC Docket No. 10-90, *Notice of Proposed Rulemaking*, FCC 11-13 (rel. Feb. 8, 2011) (“NPRM”).

2 Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010) (“National Broadband Plan”).

SUMMARY

Public Interest Commenters urge the Commission to implement reforms in three major areas as part of a comprehensive effort to transition the high-cost mechanism into a fund that explicitly supports the deployment and adoption of affordable broadband service. The Commission should (1) create a more inclusive framework that will substantially expand the type and number of providers eligible to receive USF support; (2) require USF recipients, both during and after the transition of the high-cost fund to the Connect America Fund, to provide broadband-capable facilities while maintaining or improving upon existing voice service; (3) require USF recipients, both during and after the transition of the high-cost fund to the Connect America Fund, to comply with explicit network neutrality and open access obligations that mirror the requirements for recipients of BTOP support, in addition to the public interest obligations the Commission currently proposes.

The Commission should take these steps while keeping in mind its statutory duty to strike an appropriate balance between “possibly competing priorities”³ outlined in the NPRM. Whatever tensions may exist between these priorities under the current system, however, Public Interest Commenters submit that the Commission can more readily balance them by taking the steps proposed in these comments: transitioning the high-cost fund to support broadband facilities over which providers readily can offer voice service, expanding the class of eligible recipients to include more responsive and efficient community-based and community-oriented broadband service providers, and promoting transparency and greater accountability in the use of universal service funding through the use of incentive-based funding mechanisms. The transition to the Connect America Fund should be accompanied by a transition to more transparent,

3 NPRM ¶ 16.

accountable, “market-driven and incentive-based”⁴ policies and mechanisms for all recipients of High-Cost and then Connect America Fund support.

When implementing the reforms contemplated in the NPRM, the Commission’s primary goal must be attainment of the principles articulated in Section 254(b) of the Communications Act, which together require the Commission to ensure comparable access to affordable and advanced communications services for consumers in all demographic groups and in all regions of the nation. The Commission’s charge from Congress is to promote the availability of “quality services” at “just, reasonable, and affordable rates,”⁵ not to preserve or prop up particular carriers’ business plans. For these reasons, the Commission should broaden provider eligibility and take the steps outlined herein to promote the availability of high quality but affordable communications services.

I. INTRODUCTION

The Commission is at a critical juncture. To ensure that the needs of the country’s most vulnerable populations are met, it is imperative that the Commission shift the Universal Service Fund to support innovation and leverage a wide variety of network and business models so that *all* Americans have access to fast and affordable broadband. In an industry where economic factors such as economies of scale, high sunk costs, and expensive infrastructure often create disincentives for even the most profitable commercial telecommunications providers to build out to high-cost areas, the Commission must acknowledge when implementing contemplated USF reforms the importance of municipal, state, regional, tribal, and non-profit networks. Such networks have tremendous ability and potential to provide service to high-cost areas. The Commission should embrace the efforts of such networks to meet the needs of the high-cost

4 *Id.* ¶ 33.

5 47 U.S.C. § 254(b)(1).

communities they currently serve and preserve their ability to expand to additional communities by ensuring that they are eligible to receive the same support available to commercial providers.

In addition, the Commission should acknowledge the benefits of preserving access to the open Internet over any broadband networks built and maintained using public funds. The economic disincentives to commercial deployment of advanced communications facilities in high-cost rural areas generally do not allow for competition among providers, as even with the aid of universal service subsidies certain service territories may support the operations of just a single provider. The absence of competition in that case might bolster the ability and incentives of that single provider, or even of a small handful of providers in an area with some limited choice among operators, to restrict the freedom of broadband users to access lawful websites, content, and applications. Moreover, as Public Interest Commenters and others explained in their comments in the Commission's Open Internet docket, "[e]ffective competition alone – if it even existed in the current marketplace for broadband services – would not obviate the need for" open Internet protections.⁶ This is true because of the market power exercised by dominant Internet service providers, the fact that subscribers are locked into their current providers by switching costs and other deterrents to changing service, the fact that certain discriminatory network management practices may escape customers' notice, and the fact that competition and market forces work poorly to protect the interests of numerical minorities.⁷

The Commission should mitigate all of the competitive realities through the imposition of open Internet obligations on providers receiving USF support for deployment of broadband facilities. The Commission therefore should adopt explicit network neutrality requirements

⁶ Comments of Public Interest Commenters, GN Docket 09-191, WC Docket No. 07-52, at 24 (filed Jan. 14, 2010).

⁷ See *id.* at 23-26.

applicable to any providers receiving USF support, as well as open access obligations applicable when the high-cost fund or Connect America Fund limits eligibility for support to a single provider in a high-cost area. These obligations are critical to aligning provider incentives to invest in capacity, and will prevent incumbent carriers from stifling innovation and competition with claims of artificial scarcity. Such obligations will provide mechanisms to maximize the economic and social impact of federally supported broadband infrastructure and allow for competition in areas where there is currently and may continue to be only one facilities-based provider.

II. THE COMMISSION SHOULD ADOPT A MORE EXPANSIVE DEFINITION OF ELIGIBILITY FOR HIGH-COST AND CONNECT AMERICA FUND SUPPORT THAT EXPLICITLY INCLUDES COMMUNITY BROADBAND NETWORKS.

Local, state, regional, and tribal governments, as well as non-profit entities, all play a critical role in the deployment of communications and broadband infrastructure, particularly to unserved and underserved communities. These “Community Networks” are varied in their structure, technology, and governance, making them uniquely responsive to the communities they serve, and often they serve areas and communities that are ignored by large incumbent telecommunications providers. In many instances, they are designed with a purpose of community inclusion, and in addition to providing broadband access to residents and businesses they are strengthened by a proximate relationship to essential community anchor institutions. These facilities must be synergized, to use the Commission’s term⁸, to create an efficient, high-capacity and scalable infrastructure for deployment into high-cost areas. To do so, it is

⁸ NPRM ¶ 149.

imperative that the Commission's rules permit community networks to be eligible to receive support from the fund.⁹

The term "Community Network" encompasses a variety of technologies, architectures, and services provided by municipalities, state governments, tribal governments, and non-profit organizations. They include municipal networks like those in Lafayette, Louisiana and Wilson, North Carolina, which provide high-speed fiber networks alongside voice and cable television offerings.¹⁰ They include non-profit networks such as the Mountain Area Information Network ("MAIN") in Asheville, North Carolina, which also runs a low-power FM radio station.¹¹ And they include wireless providers like Freenet in Lawrence, Kansas, whose goal is to "build a community in which everyone can access the Internet, anywhere, anytime, free of charge."¹² Though they vary in structure and mission, each of these networks provides valuable connectivity. Sometimes these networks help to fill gaps in unserved and underserved communities, but they should not be viewed as a fallback option because they most often deliver service and value superior to that offered by any commercial provider. In any case, these Community Networks are especially responsive to the needs of their communities, and have the ability to leverage community infrastructure.

9 Inclusion of Community Networks is needed at all stages in the transition of the fund. Where these networks can provide voice services regardless of the technology used to provide them, they should be eligible for benefits under the High-Cost fund. Additionally, where these networks provide broadband connectivity, they should be eligible for support from the High-Cost fund and throughout all stages of the program's transition to the Connect America Fund.

¹⁰ See "Lafayette, La., finally gets its fiber network," (Feb. 6, 2009) *available at* http://news.cnet.com/8301-11386_3-10158583-76.html; City of Wilson, NC, Website, <http://www.wilsonnc.org/living/fiberopticnetwork/>.

¹¹ See Mountain Area Information Network website, *available at* <http://main.nc.us/>.

¹² See Lawrence Freenet website, *available at* <http://www.lawrencefreenet.org/what-we-do.php>.

Community Networks currently are included in the Broadband Technology Opportunities Program (“BTOP”) and Broadband Initiatives Program (“BIP”). These programs “correctly realized that the entity deploying the broadband, whether a private for-profit carrier or a public entity, is irrelevant to the need for expanding broadband availability.”¹³ Indeed, one of the reasons these programs have been so successful is because of their inclusion of *all* potential broadband providers. Many of these providers are similarly interested in providing services with support from the Universal Service Fund.¹⁴ It makes little sense for the Commission, when eager, local, community-based providers stand ready to improve deployment and adoption, to deny those providers the opportunity to put their existing networks to use in support of the goal of bringing affordable broadband access to high-cost areas.

Moreover, as the Commission recognizes, the path to ubiquitous broadband access that includes high-cost rural areas is dependent upon the integration of existing infrastructure, community anchor institutions, and alternative networks such as regional fiber networks.¹⁵ This strategy of “Comprehensive Community” deployment provided for in the BTOP program, with a focus on leveraging high capacity middle-mile infrastructure to serve the broader community, ultimately reduces the cost of providing broadband services to end users and provides the

13 Comments of The National Association of Telecommunications Officers and Advisors and New America Foundation’s Open Technology Initiative, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 2-3 (filed July 12, 2010) (“NATOA/NAF Comments”).

14 *See, e.g.*, “Wally Bowen: ‘Bringing Down Barriers to Broadband,’” Mountain Express, *available at* http://www.mountainx.com/blogwire/2011/wally_bowen_bringing_down_barriers_to_broadband.

15 NPRM ¶ 149 (“We also seek comment on how USF can best achieve synergies with the connectivity objectives articulated for schools, libraries, and rural health care facilities in section 254. Where build out is required to connect these particular types of community anchor institutions – for example, through the construction of lateral connections to regional fiber networks – should this construction be supported through the CAF, E-Rate, or Rural Health Care programs, individually or in combination?”).

foundation for scaling up networks for unserved and underserved communities as needs increase.¹⁶ Community networks are well positioned to take advantage of this model, as the process is defined by the community, with stakeholders from across that community collaborating to design and build a broadband infrastructure that will fit its specific and unique needs.¹⁷ The benefits of this approach also include the ability of community networks to leverage and use more effectively funding from other related programs such as E-rate and the Rural Healthcare Program to create an infrastructure that not just serves residents and small businesses but also essential community anchor institutions.

Additionally, the areas that these Community Network providers would serve often include the very areas where there is little economic incentive, even with reasonable subsidies, to induce traditional providers to build a scalable infrastructure and provide service at affordable rates.¹⁸ These networks are particularly well suited to meet the needs of these communities. As multiple studies indicate,¹⁹ there are areas of the country where the return on investment (“ROI”)

16 See Notice of Funds Availability, 74 Fed. Reg. 3791, 3795 (July 9, 2009). “Once Middle Mile facilities are built, the costs of providing services to a broad array of end users are reduced.... Middle Mile broadband facilities ... are a necessary foundation for the ultimate provision of affordable end-user broadband services in unserved and underserved communities.”

17 See Laura Forlano, Alison Powell, Gwen Schaefer, & Benjamin Lennett, “From the Digital Divide to Digital Excellence: Global best practices to aid development of municipal and community wireless networks in the United States,” New America Foundation, at 7 (Feb. 2011) (“Digital Divide”), *available at* http://www.newamerica.net/publications/policy/from_the_digital_divide_to_digital_excellence (“There is growing evidence that these community-based models are more flexible and robust than those of traditional telecommunication companies, particularly in areas where standard models have failed.”).

18 See Digital Divide at 5 (“Local networks fill critical gaps in providing connectivity to often unserved or underserved communities, groups and individuals. They can provide broadband in markets that private-sector telecommunication companies do not consider viable or where economic returns may not satisfy investor demands.”).

19 See, e.g., S. Derek Turner, “Finding the Bottom Line: The Truth About Network Neutrality and Investment,” Free Press, October 2009; Gregory Rose, “Wireless Broadband and the Redlining of Rural America,” New America Foundation (April 2010), *available at*

is so low that such areas will be permanently “redlined” by incumbent telecommunications providers. In these areas, “population density, median household income, and levels of commercial activity are too small to permit efficient aggregation of demand and too much of its geographic area is too remote from primary infrastructure (Internet backbone, interstate highways) to permit cost-effective deployment.”²⁰ In these situations where the ROI is particularly low, Community Networks provided by public or non-profit entities may be not only the best choice for deployment, but realistically the *only* choice.²¹

Thus, when the Commission asks in the NPRM whether it should “forbear from requiring that recipients of universal service support should be designated as [Eligible Telecommunications Carriers, or] ETCs,”²² Public Interest Commenters respond that the Commission can and should take steps to give Community Networks the ability to receive support to meet the needs of their communities.

III. THE COMMISSION MUST REQUIRE HIGH-COST AND CONNECT AMERICA FUND RECIPIENTS TO DEPLOY BROADBAND FACILITIES, YET PRESERVE VOICE SERVICE AND IMPROVE QUALITY OF ALL SUPPORTED SERVICES.

The Public Interest Commenters wholly support the Commission’s intention to transition the High-Cost Fund into a mechanism designed to bring “robust, affordable broadband to all Americans” by “reorienting USF...to meet the nation’s broadband availability challenge.”²³ The benefits of broadband access and the need to bring USF into the twenty-first century hardly need be repeated, as the Commission recognized in the NPRM that “[u]biquitous broadband

http://wirelessfuture.newamerica.net/publications/policy/wireless_broadband_and_the_redlining_of_rural_america (“Rose Study”).

20 Rose Study at 2.

21 See NATOA/NAF Comments at 3.

22 NPRM ¶ 89.

23 *Id.* ¶ 1.

infrastructure has become crucial to our nation's economic development and civic life.”²⁴ The Public Interest Commenters have long recognized the importance of broadband²⁵ and advocated for transitioning USF to provide explicit support for this century's “essential telecommunications platform.”²⁶ For these reasons, “broadband-capable facilities and broadband services should be not only permitted, but required of providers receiving support from the Connect America Fund, or from any other subsequent iteration of or successor to the current high-cost mechanisms.”²⁷

While fully supporting this transition, Public Interest Commenters recognize that the Commission must balance various priorities²⁸ outlined in the NPRM. Yet even while transitioning the high-cost fund, the Commission can provide explicit support for broadband facilities over which providers readily can offer voice service. For this reason, the Public Interest Commenters support the Commission's proposal in the NPRM to allow for the provision of voice service using any technology (including VoIP) that meets the definition of “voice telephony service.”²⁹ By adopting such flexible policies and simultaneously preserving support for traditional voice telephony services in areas where no broadband service has yet been deployed, the Commission can promote the construction of next-generation networks while maintaining universal access to voice service.

24 *Id.* ¶ 3 (citing National Broadband Plan at xi).

25 *See, e.g.*, Comments of Public Knowledge, Media Access Project, the New America Foundation, and U.S. PIRG, GN Docket No. 09-51, at 1 (filed June 8, 2009).

26 *See, e.g.*, *Ex Parte* Notification of American Civil Liberties Union, Benton Foundation, Consumers Union, Leadership Conference on Civil and Human Rights, Media and Democracy Coalition, Media Access Project, Media Action Grassroots Network, New America Foundation, Public Knowledge, and United Church of Christ OC Inc, WC Docket 10-90 *et al.*, at 1-2 (filed Jan. 6, 2011).

27 *Id.*

28 NPRM ¶ 16.

29 *Id.* ¶ 98.

As described more fully above and also in Part III below, the Commission’s primary goal in balancing these various priorities must be attainment of the principles articulated in Section 254(b) of the Communications Act. To do so, the Commission must take steps such as those proposed throughout these comments, all in order to promote technological neutrality while ensuring that the quality and affordability of broadband and voice services available in high-cost areas will be comparable to such services in urban areas.

Rationalizing mechanisms to promote greater transparency and greater accountability in the use of universal service funding also will be essential as the Commission reforms USF and facilitates a better accounting of where and how support is used to deploy advanced communications networks. While the Public Interest Commenters will reserve comment on the changes that the NPRM proposes to current individual high-cost mechanisms, we endorse generally the use of incentive-based funding mechanisms that will benefit consumers rather than existing business plans, and that more properly will align providers’ incentives to spend support dollars wisely rather than rewarding inefficient behavior.

IV. THE COMMISSION SHOULD ADOPT EXPLICIT NETWORK NEUTRALITY OBLIGATIONS FOR PROVIDERS THAT RECEIVE HIGH-COST OR CAF SUPPORT.

The Commission proposes a variety of supported service obligations for ETCs receiving High-Cost Fund and ultimately Connect America Fund support, but it also seeks “comment on what public interest obligations should apply to ETCs going forward as we reform and modernize the existing high-cost program to advance broadband.”³⁰ Specifically, the NPRM notes “that some commenters have suggested that compliance with the Commission’s open

30 NPRM ¶ 92.

Internet rules should be spelled out as a public interest obligation for USF recipients, and seek[s] comment on this suggestion.”³¹

Public Interest Comments urge the Commission, at minimum, to adopt the same non-discrimination and network interconnection obligations applicable to recipients of BTOP funds.³² Adopting these requirements for Universal Service Fund recipients will advance the goals of § 254 and also promote deployment and competition. As enumerated in 47 U.S.C. § 254(b), the Commission’s principles of universal service include, *inter alia*, the provision of quality services at just, reasonable, and affordable rates; access to advanced telecommunications and information services for all regions; and access to such services in rural and high cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas.³³ Adopting network neutrality conditions for USF recipients would help meet these goals by ensuring that users in high cost areas are not discriminated against in terms of their ability to access the full diversity of Internet content, applications, and services, because of where they live or their limited options for connectivity.

Additionally, the Commission’s rules should also be explicitly network agnostic, applying those open Internet conditions to *all* carriers receiving universal service support, including wireless providers. A network-agnostic approach will level the competitive playing field among broadband providers on various technological platforms and prevent regulatory arbitrage. Indeed, the Public Interest Commenters and others have highlighted the need for regulatory

31 *Id.* ¶ 150 n.250 (citing Letter from Matthew F. Wood, Associate Director, Media Access Project, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 10-90, 05-337, 03-109, and WT Docket No. 10-208 (filed Feb 1. 2011) (“MAP Letter”).

32 American Recovery and Reinvestment Act of 2009 § 6001(j), Pub. L. No. 111-5, 123 Stat. 115 (2009).

33 47 U.S.C. § 254(b)(1)-(3).

parity among carriers, noting that “[t]his ‘level playing field’ between access platforms is important not merely vis-à-vis industry competition, innovation and economic productivity. It will also have an enormous social impact as growing shares of young and lower-income populations rely disproportionately – and even exclusively – on mobile devices to connect to the Internet.”³⁴ Regulatory parity would ensure that no providers using different technological platforms have unfair competitive advantages based solely on their network architecture, and it would encourage broadband deployment with technology best suited to meet the needs of the community.

Regulatory parity will also prevent arbitrage. By imposing arbitrarily different regulations on different technologies that offer competing services, the Commission encourages providers to take advantage of the more favorable set of regulations.³⁵ Public interest organizations and private companies have expressed concern with disparate regulations among wireless and wireline providers, and have similarly noted the anticompetitive harms that can result.³⁶ The Commission should therefore avoid facilitating arbitrage opportunities by ensuring that the same obligations, particularly network neutrality obligations, are applied both to wireline and wireless carriers.

34 Comments of New America Foundation, Columbia Telecommunications Corporation, Consumers Union, Media Access Project, and Public Knowledge, GN Docket 09-191, WC Docket No. 07-52, at 4 (filed Jan. 14, 2010).

35 See Jonathan E. Nuechterlein & Philip J. Weiser, *Digital Crossroads: American Telecommunications Policy in the Internet Age* 54-55 (2007).

36 See, e.g., MAP Letter at 2-3; Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Malena F. Barzilai, Windstream Communications, Inc., WC Docket No. 10-90 *et al.*, Attachment (filed Jan. 28, 2011).

V. THE COMMISSION ALSO SHOULD ADOPT OPEN ACCESS OBLIGATIONS FOR PROVIDERS RECEIVING SUPPORT, PARTICULARLY WHERE THAT RECIPIENT IS THE SOLE PROVIDER OF SERVICE IN HIGH-COST AREA.

The Commission notes that “[s]ome commenters have suggested that we consider policies to encourage sharing of infrastructure, including by residential and anchor institution users” and “seek[s] comment on the costs and benefits of [] applying such policies in the universal service context.”³⁷ Public Interest Commenters urge the Commission to adopt open access and interconnection obligations for providers receiving support from the High-Cost Fund and ultimately the Connect America Fund.

As the Commission considers potentially funding a single entity in high-cost areas through the Connect America Fund, it is imperative that open access obligations be applied to any such recipient, in line with the access obligations imposed as conditions of support for BTOP grant recipients.³⁸ Although such an approach of supporting only a single facilities-based provider may be more economically efficient, given the costs of providing service in certain high-cost areas, the Commission should not completely foreclose the possibility of competition in these areas. Supporting a single network infrastructure is entirely different from the more anti-competitive step of the government granting an Internet Service Provider monopoly. While public subsidies for the former can be more cost-effective and potentially benefit consumers overall, granting an effective Internet service provider monopoly by permitting the network owner to close its network to wholesale interconnection at either the last mile or middle mile is both unnecessary and harmful to consumers. Open access obligations would maintain the potential for competition and offer high-cost area residents more choices in terms of services and

³⁷ NPRM ¶ 148.

³⁸ American Recovery and Reinvestment Act of 2009 § 6001(j), Pub. L. No. 111-5, 123 Stat. 115 (2009).

plans, while ensuring that USF support can benefit a wide variety of providers. For example, the UTOPIA network is an open access fiber-to-the-home network that serves residents in sixteen towns across Utah, and it allows customers to choose from upwards of seven Internet Service Providers.³⁹

Moreover, it is critical for any provider to have adequate and affordable access to middle-mile connectivity when that provider deploys broadband to its own customers. This access is particularly important in areas where local providers have only one backbone provider with which to interconnect.⁴⁰ As NAF noted in comments submitted in the Commission's proceeding on rural broadband, "[i]ncreasingly, access to the high-speed middle-mile links or related infrastructure that carries Internet traffic to the backbone, and the escalating costs associated with transporting traffic among networks, can create substantial barriers to the development of successful municipal and community wireless networks."⁴¹ Thus, the Commission should require High-Cost and Connect America Fund recipients to provide interconnection on a non-discriminatory basis and at reasonable rates to other providers, including non-profit and community networks, both to promote competition and maximize the use and benefit of available broadband infrastructure in high-cost areas.

VI. CONCLUSION

Successful transition of the high-cost mechanisms of the Universal Service Fund to support advanced facilities will require a broader definition of carriers eligible to receive support.

39 See UTOPIA's website *available at* <http://www.utopianet.org/how-it-works>.

40 See *Rural Broadband Report Published in the FCC Record*, GN Docket No. 09-29, Public Notice, 24 FCC Rcd 12791, ¶ 114 (2009); Digital Divide at 32. Where the Commission is proposing reverse incentive auctions under the Connect America Fund, this point becomes particularly important if only one entity is funded in a given area.

41 Digital Divide at 32.

Specifically, the Commission's rules must include a more expansive definition of eligible providers that allows Community Networks the opportunity to receive support from the fund and provide service in high-costs areas.

Additionally, public interest obligations on providers receiving support for broadband-capable facilities must include both network neutrality and open access obligations to ensure that consumers are not harmed and that competition in these areas can still be supported.

Respectfully Submitted,

/s/ Sarah J. Morris

Sarah J. Morris
Benjamin Lennett
Open Technology Initiative
New America Foundation
1899 L Street, NW 4th Floor
Washington, DC 20036
(202) 986-2700
morriss@newamerica.net

Parul P. Desai
Consumers Union
1101 17th Street NW, Suite 500
Washington, DC 20036

Matthew F. Wood
Media Access Project
1625 K Street, NW, Suite 1000
Washington, DC 20006

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